

**STATE OF MISSOURI
MISSOURI BOARD OF PHARMACY**

IN RE:

CVS/PHARMACY # 6745
6999 Parker Rd
Florissant, MO 63033

Complaint No. 2019-000780

License No. 2012036310

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF PHARMACY
AND CVS/PHARMACY #6745**

COME NOW CVS/PHARMACY #6745 (“Respondent” or the “Pharmacy”) and the Missouri Board of Pharmacy (“Board” or “Petitioner”) and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent’s permit to operate as a pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri (“AHC”) and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges against it proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against it; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against it and, subsequently, the right to a

disciplinary hearing before the Board at which time Respondent may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against its permit. Being aware of these rights provided it by operation of law, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to it.

Respondent acknowledges that it has received a copy of the draft complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's permit.

For purposes of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true, stipulates with the Board that Respondent's license as a pharmacy, numbered 2012036310, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

JOINT STIPULATION OF FACTS

1. The Missouri Board of Pharmacy is an agency of the State of Missouri created and established pursuant to §338.110, RSMo (2016),¹ for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.
2. CVS/Pharmacy #6745, 6999 Parker Rd., Florissant, MO 63033, is permitted by the Board under license number 2012036310.
3. Respondent's license was at all times relevant herein current and active.

¹ All statutory references are to the Revised Statutes of Missouri (2016) unless otherwise noted.

4. On February 5, 2019, a Board investigator conducted a routine inspection of CVS/Pharmacy #6745.

5. The investigator discovered 170 outdated drug products in Respondent's active inventory. These products were set aside and photographed by the investigator.

6. The investigator also noted the following violations during the inspection:

A. Respondent had a pharmacist license posted for pharmacist C.I. that did not include a 2 x 2 photograph of the pharmacist;

B. Respondent did not maintain a pharmacy technician list;

C. The pharmacy's Fillmaster Plus had dried, caked medication on the tubing and under the platform of the machine, which required cleaning to prevent cross-contamination;

D. Respondent had an unlabeled bottle of prednisone solution, attached with rubber band to a stock bottle, on the shelf;

E. Respondent compounded multiple prescriptions for Magic Mouthwash but failed to include the active or therapeutic ingredients contained in the preparation on the prescription label/container;

F. Respondent dispensed a prescription with a brand name on the label when a generic product was dispensed;

G. Respondent's controlled substance inventory on 5/1/2018 did not include the pharmacy's pseudoephedrine products; and

H. Respondent's Combat Meth Act self-certification had expired on 12/31/2018 and had not been renewed.

JOINT CONCLUSIONS OF LAW

1. Cause exists to take disciplinary action against Respondent's pharmacy permit under 20 CSR § 2220-2.010(6), which provides:

(6) Drugs and devices that are maintained as part of the pharmacy inventory or are being processed for dispensing or other distribution purposes must be physically separated at all times from articles, supplies or other drugs that are for employee personal use or that are outdated, distressed, misbranded or adulterated. An area separate from drug storage must be used to store quarantined, nonusable substances. Areas used for this type of drug storage must be clearly identified. Any prescription drugs that are present in a licensed pharmacy but are for the personal use of pharmacy personnel must be labeled in accordance with section 338.059, RSMo.

2. Cause also exists to take disciplinary action against Respondent's pharmacy permit under 20 C.S.R. 2220-2.010(1)(K), which provides:

(K) All pharmacists will be required to have a photo of themselves not smaller than two inches by two inches (2" x 2") in the upper righthand corner of the current renewal licenses. This photo and license renewal shall be conspicuously exposed in the pharmacy or drug store or place of business in which the pharmacist is employed as required by law.

3. Cause also exists to take disciplinary action against Respondent's pharmacy permit under 20 C.S.R. § 2220-2.090(2)(BB), which provides:

(2) The responsibilities of a pharmacist-in-charge, at a minimum, will include:

* * *

(BB) Maintain a current list of all personnel employed by the pharmacy as pharmacy technicians. The list shall include the name, registration number or a copy of an application for registration that has been submitted to the board and a description of duties to be performed by each person contained on the list;

4. Cause also exists to take disciplinary action against Respondent's pharmacy permit under 20 C.S.R. § 2220-2.010(1)(F), which provides:

(F) All pharmacies shall be maintained in a clean and sanitary condition at all times. Any procedures used in the dispensing, compounding and admixture of drugs or drug-related devices must be completed under clean and, when recommended, aseptic conditions.

5. Cause also exists to take disciplinary action against Respondent's pharmacy permit under 20 C.S.R. § 2220-2.130(1)(D), which provides:

(D) Any prepacked drug must have a label affixed to it which contains, at a minimum, the name and strength of the drug, the name of the manufacturer or distributor, an expiration date as defined in subsection (1)(C) and lot number. Pharmacies that store drugs within an automated counting device may, in place of the required label, maintain records for lot numbers and expiration dates that are required on the label as long as it is fully traceable and is readily retrievable during an inspection.

6. Cause also exists to take disciplinary action against Respondent's pharmacy permit under 20 CSR 2220-2.400(7)(F), which provides:

(F) The actual name of each active or therapeutic ingredient contained in a compound shall be listed on the container of any product provided to a consumer.

7. Cause also exists to take disciplinary action against Respondent's pharmacy permit under 20 CSR 2220-2.400(8)(A), which provides:

(A) A pharmacist dispensing any compounded drug is responsible for ensuring that the product has been prepared, labeled, controlled, stored, dispensed and distributed properly.

8. Cause also exists to take disciplinary action against Respondent's pharmacy permit under 19 CSR 30-1.042(1)(A) which provides:

(A) Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory was taken. Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant, including substances returned by a customer, substances ordered by a customer but not yet invoiced, substances stored in a warehouse on behalf of the registrant and substances in the possession of employees of the registrant and intended for distribution as complimentary samples.²

9. Cause also exists to take disciplinary action against Respondent's pharmacy permit for violation of federal law under the Combat Methamphetamine Epidemic Act, 21 U.S.C. § 830(e)(1)(A)(vii), which provides that regulated sellers of pseudoephedrine products must submit an annual self-certification to the federal Drug Enforcement Agency affirming compliance with mandatory training and other statutory requirements. Subsection 830(e)(1)(A)(vii) requires:

(vii) In the case of individuals who are responsible for delivering such products into the custody of purchasers or who deal directly with purchasers by obtaining payments for the products, the seller has submitted to the Attorney General a self-certification that all such individuals have, in accordance with criteria under subparagraph (B)(ii), undergone training provided by the seller to ensure that the individuals understand the requirements that apply under this subsection and subsection (d).

10. Cause also exists to take disciplinary action against Respondent's pharmacy permit under § 338.055.2(5), (6), (13) and (15), RSMo, which provide:

² Pseudoephedrine is defined as a controlled substance under 19 CSR 30-1.002(1)(E)(3).

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

1. Respondent's pharmacy license numbered 2012036310 shall be placed on PROBATION for a period of THREE YEARS ("disciplinary period"). The period of probation shall constitute the disciplinary period. The terms of discipline shall be as follows:

A. Respondent shall pay all required fees for licensing to the Board and shall renew its pharmacy license prior to October 31 of each licensing year.

- B. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.
- C. If requested, Respondent shall provide the Board a list of all licensed pharmacists employed by Respondent, and the individuals' current home addresses and telephone numbers
- D. If, after disciplinary sanctions have been imposed, the Respondent fails to keep its pharmacy license current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.
- E. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months (due by each January 1 and July 1), beginning with whichever date occurs first after this Agreement becomes effective, stating truthfully whether or not it has complied with all terms and conditions of its disciplinary order.
- F. Respondent shall not serve as an intern training facility for interns.
- G. Respondent shall make a representative of the pharmacy available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.
- H. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Agreement.
- I. The parties to this Agreement understand that the Board of Pharmacy will maintain this Agreement as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

2. Prior to the expiration of the disciplinary period, Respondent may petition the Board to shorten the length of the probation. If Respondent petitions the Board to shorten the probation, the Board will consider the petition, but the Board makes no representations or promises regarding the response to any such petition by Respondent.

3. Upon the expiration of said discipline, Respondent's license as a pharmacy in Missouri shall be fully restored if all other requirements of law have been satisfied provided, however, that in the event the Board determines that the Respondent has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline the Respondent.

4. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

5. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

5. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement

Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. Respondent hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, ~~costs~~, and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. §1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,

_____ REQUESTS

✓ _____ DOES NOT REQUEST

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S PERMIT TO OPERATE AS A PHARMACY.

Respondent understands that it may, either at the time the Settlement Agreement is signed by all parties, or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Respondent's permit. If Respondent desires the Administrative Hearing Commission to review this Agreement, it may submit its request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Board's Executive Director.

RESPONDENT

CVS/PHARMACY # 6745

By: 

Print Name: Leo Lariviere

Date: -1/13/22

PETITIONER

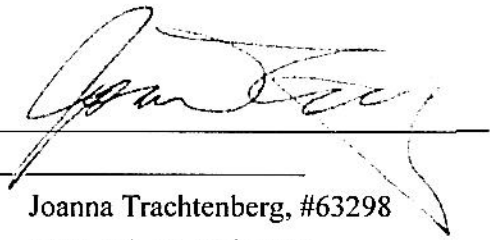
MISSOURI BOARD OF PHARMACY

By: 
Kimberly Grinston, Executive Director

Date: 1-26-2022

TGH LITIGATION LLC

By: _____



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